

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NEVADA

UNITED STATES OF AMERICA,)
Plaintiff,) CASE No. 2:11-CR-0340-PMP-CWH
vs.)
TYRICKA MIDDLETON,)
Defendant.) Las Vegas, Nevada
) February 10, 2014
) 10:02:47 a.m.

And related parties and cases)

SENTENCING AND DISPOSITION

THE HONORABLE PHILIP M. PRO, PRESIDING
DISTRICT JUDGE OF THE U.S. DISTRICT COURT

COURT RECORDER:

HENRY ENRIQUEZ
U.S. District Court

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2:11-CR-0340-PMP-CWH

U.S. v. Middleton

02/10/14

Sentencing

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APPEARANCES:

FOR THE PLAINTIFF:

ROGER YANG,
Assistant U.S. Attorney
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FOR THE DEFENDANT:

MELANIE A. HILL, Esq.
Law Office of Melanie Hill
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ALSO PRESENT:

BRIDGER FRANZEN,
U.S. Probation Officer

SANDRA BUSTOS,
Pretrial Services Officer

1 LAS VEGAS, NEVADA

MONDAY, FEBRUARY 10, 2014

2 PROCEEDINGS BEGAN AT 10:02:47 A.M.

3 * * * * *

4 THE CLERK: All rise.

5 THE COURT: Have a seat everybody.

6 All right, we have two matters on calendar this
 7 morning. We'll proceed with the criminal matter, United
 8 States versus Tyricka Middleton first. I do not think that
 9 will take a great deal of time. There's been a lot of work
 10 done by the parties, in particular the defense in preparing
 11 for this.

12 Have a seat please, everybody.

13 And I think consistent with what I've indicated at
 14 prior hearings, you all understand the perspective I have
 15 with regard to sentencing in this case as well, and Ms.
 16 Middleton's situation. She's made, I must say, considerable
 17 progress based upon the report I have from Pretrial Services,
 18 the probation report and the materials provided on behalf of
 19 Ms. Middleton by the defense, by defense counsel.

20 Ms. Middleton, I want to go back to the events
 21 which bring us to this point. On, of course this case
 22 started much before that date and you'd previously proceeded
 23 to trial. There was a hung jury. And a lengthy period where
 24 continued negotiations were attempted after spending many
 25 months in custody. I think 19 months in custody. I ordered

1 you released and placed in residential living situation. And
 2 while you've had a few fits and starts you've done, on the
 3 whole, quite well. And I -- based on all of the materials
 4 that have been submitted to me it looks like you have really
 5 turned a corner in your life and are making meaningful
 6 progress and I commend you for that.

7 But I want to go back and make a record of the
 8 proceedings today with regard to sentencing and in doing
 9 that, as noted in the presentence report on November 8th of
 10 last year, you entered a plea of guilty to the charged
 11 contained in a one count information, that charge being
 12 trafficking with respect to peonage slavery, involuntary
 13 servitude or forced labor and aiding and abetting, in
 14 violation of 18, U.S. Code, Sections 1590 and (2). At this
 15 time I adjudicate you guilty of that offense.

16 And I want to remind you that except to the extent
 17 you may have waived your right to do so, any appeal of
 18 sentencing findings would have to be started by filing a
 19 notice of appeal within 15 days of this date. Do you
 20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now the Department of Probation
 23 prepared a very thorough presentence report dated January 6th,
 24 2014. I don't think we have objections per se, to the
 25 contents of the guideline calculation or probably the

1 recommendation which does recommend a departure and I think
2 appropriately so. But let me make sure there are no factual
3 errors in the report.

4 Mr. Yang, are you aware of any factual mistakes in
5 the presentence report?

6 MR. YANG: No, Your Honor.

7 THE COURT: And, Ms. Hill, are you?

8 MS. HILL: No, Your Honor. And we had no
9 objections to the PSR.

10 THE COURT: And did you read that presentence
11 report as well, Ms. Middleton?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And did you see any mistakes in it?

14 THE DEFENDANT: No.

15 THE COURT: All right. Well, the presentence
16 report chronicles the history of this case thoroughly. Those
17 of us in the room have lived it and have far more familiarity
18 with all of those circumstances.

19 The offense level that is calculated at paragraphs
20 31 through 39 come out in an offense level 19. A Criminal
21 History Category calculated at paragraphs 40 through 49 come
22 out at a Criminal History Category III.

23 And in a great many respects it reads like
24 something historical but it's like talking about somebody
25 that used to exist, not somebody I think that exists now,

1 which is a good thing for you. Absent any departure that
 2 would have provided for a potential range as set forth in
 3 presentence report of 37 to 46 months, one to three years
 4 supervised release, a fine of six to \$60,000 and a mandatory
 5 penalty assessment of \$100.

6 The Department of Probation makes a very, again,
 7 well articulated at paragraph 107, a statement as to why the
 8 departure that's recommended by probation is made. It
 9 provides a couple of alternatives, recommending that --
 10 considering departure under guideline section 5K2.0(a)(2)(B)
 11 and guideline section 5K2.12 and seeks to suggest a sentence,
 12 that you be sentenced to time served, which is the 19 months
 13 you've already spent in custody. Followed by three years of
 14 supervised release and recommends certain special conditions
 15 which in and of themselves do not seem particularly --
 16 particularly onerous. Although I'll let counsel speak to
 17 those.

18 My inclination is to do exactly what probation has
 19 recommended. I think something I'd, again, articulated
 20 previously that no further imprisonment is warranted. That
 21 a term of supervision is certainly warranted and really will
 22 be beneficial to you. The support mechanisms that will be
 23 available to you or continue to be important to you. But you
 24 obviously have a lot of people now that are backing you up
 25 and standing behind you. The Pretrial Services report of

1 February 7, 2014, also notes the -- in the assessment the
2 progress that you have made and that you may be in a position
3 to help other people down the road in a similar situation
4 that you found yourself in previously and I hope that that's
5 correct as well.

6 So with that let me ask first, Mr. Yang, does the
7 government have a specific recommendation as to sentence
8 and/or conditions of supervision that perhaps are not
9 already encompassed in Mr. Franzen's presentence report
10 proposal?

11 MR. YANG: Your Honor, I don't have a copy of the
12 plea agreement with me for some reason. If I could ask the
13 Court's indulgence and ask for a copy of the plea agreement?

14 THE COURT: Well, I've got a copy here, but --

15 MS. HILL: I gave him a copy, Your Honor.

16 THE COURT: Oh, you did?

17 MS. HILL: Yeah.

18 THE COURT: Oh, okay.

19 (Pause in the Proceedings)

20 MR. YANG: The government is in agreement with
21 probation's recommendation and you'd recommended conditions
22 of supervised release with the exception that the government
23 understood that in entering the plea agreement she would be
24 required to register as a sex offender.

25 MR. FRANZEN: Your Honor, if I may address that?

1 THE COURT: Yeah.

2 MR. FRANZEN: I spoke with the sex offender
3 registry in the State of Nevada, I had spoke to a supervisor
4 up there regarding this matter in particular in this case
5 and the statute in which it falls under. She is not required,
6 by Nevada Statute, to register as a sex offender under this --
7 under the statute.

8 THE COURT: And that, I understood actually at the
9 time it was being negotiated was what -- that was the one
10 barrier and the thing -- the goal that was trying be -- be
11 achieved. I'm not going to order her to do so. I think that
12 would be counterproductive and, frankly, damaging to progress
13 that's being made in this individual's case. It would be an
14 injustice. So I won't -- won't order that and I don't think
15 the state law compels that either, but.

16 MR. YANG: Well, the government would like to put
17 the defendant on notice that if she moves back to California
18 there is a likelihood that she may be required to register in
19 California based on the nature of the conviction. In
20 addition the government notes at paragraph 58, page 15, the
21 government believes that that arrest and the circumstances
22 behind that arrest justify her having to register as a sex
23 offender.

24 THE COURT: Okay.

25 MR. YANG: And with that the government has no

1 further comments.

2 THE COURT: Okay. Let me go back to page 50 -- I'm
3 sorry, page 15, the prostitution conviction and contributing
4 to delinquency of a minor in December of 2010.

5 MR. YANG: That's correct, Your Honor.

6 THE COURT: Okay. Well, if that conviction so
7 required her to do so in California, that already exists.

8 MR. YANG: That was an arrest. There is no
9 disposition. But the circumstances behind that were the
10 reasons why -- one of the reasons why the government was
11 recommending sex offender registration.

12 THE COURT: Okay. All right. All right, thank you.
13 I appreciate that.

14 Ms. Hill, let me hear from you. And then of course
15 I'll hear from Ms. Middleton, anything she wishes to say,
16 though I think I've already previewed that I'm not going to
17 order, as a condition, that she register as a sex offender.
18 I don't think, certainly in the State of Nevada it's
19 required. Now I can't state with knowledge what the laws of
20 every state are and may be and that can be dealt with, I
21 suppose. But I think it would be, again, counterproductive
22 to put her in a position of having to do so. But go ahead.

23 MS. HILL: Your Honor, we agree. And with respect
24 to page 15, paragraph 58, it does say "disposition unknown."
25 She has not resolved that case at all and there's no

1 indication from what we have on the record that she will be
2 convicted of that case. This morning I provided the Court
3 with some additional supplementary materials.

4 THE COURT: Right.

5 MS. HILL: And she is actually working with --

6 THE COURT: And Mr. Yang has those I take it?

7 MS. HILL: He does, Your Honor. I handed those to
8 him.

9 THE COURT: And there's no objection to the
10 February 9, 2014, letter being filed under seal I take it?

11 MR. YANG: That's fine, Your Honor.

12 THE COURT: Okay. That one will be filed under
13 seal, Ms. Clerk. The other does not need to be filed under
14 seal. The letter of February 7th does not, but the letter of
15 February 9 should be sealed.

16 Okay.

17 MS. HILL: Yeah, that's correct, Your Honor.

18 And I just wanted to note with respect to the
19 letter from the DAs office that Ms. Middleton is a victim in
20 case that LA is prosecuting currently and we've been in
21 conversations -- I've had conversations with him about this
22 case and her need to testify in that case. And they are
23 working with her on resolving all of her California cases
24 favorably. So we don't anticipate that that is going to be
25 an issue either.

1 THE COURT: Good.

2 MS. HILL: The Court has the -- the sentencing memo
3 and I don't want to waste the Court's time going over
4 everything in detail.

5 THE COURT: Yeah.

6 MS. HILL: I just wanted to let the Court know who
7 came here to support Ms. Middleton.

8 THE COURT: Yeah, I see a lot of people.

9 MS. HILL: Just if the Court has any questions
10 about who's here from Destiny House or any questions about
11 the Destiny House program. We are recommending that the
12 Court follow the recommendation of the probation office and
13 ask that the Court have her live at Destiny House as part of
14 her conditions of release here today on the -- on the time
15 served.

16 THE COURT: No, I think that's an excellent
17 proposal by -- by probation and the residence for a period of
18 12 months would be, I think productive for her and hopefully
19 productive for other people as well.

20 MS. HILL: We believe so, Your Honor.

21 Your Honor, just so I can introduce everyone who's
22 here.

23 THE COURT: Sure.

24 MS. HILL: On the far end is Tammy Weekly
25 [phonetic], she's gonna be one of the house moms, working at

1 the house.

2 THE COURT: Right.

3 MS. HILL: She'll be there over the -- the over
4 night hours, from 1:00 a.m. until 9:00 a.m.

5 Judith Eld [phonetic], who's next to her, she'll be
6 the house mom in the evenings.

7 THE COURT: Mm-hmm.

8 MS. HILL: Coming on at 5 o'clock and staying until
9 1:00.

10 Lori Rose, who's the director of Destiny House is
11 here.

12 Annie Lobert who's the founder of Hookers For Jesus
13 and is -- this is her house that's she's starting with the
14 assistance of everyone who's here today.

15 THE COURT: All right.

16 MS. HILL: And, so she will be intimately involved
17 in Tyricka's growth and rehabilitation, as well as living at
18 Destiny House.

19 And then Carol Tidd, who's the director of
20 operations for Hookers for Jesus is also here.

21 THE COURT: All right. Thank you. Thank you all
22 for attending.

23 And is there anything that your client wishes to say
24 at this time?

25 MS. HILL: Yes, Your Honor, my client would like to

1 address the Court and read a statement that she's prepared
2 for Your Honor.

3 THE COURT: Go ahead, Ms. Middleton.

4 THE DEFENDANT: I am very grateful that I have been
5 given an opportunity to make a difference in my life. Also
6 to become a successful woman, and live a decent and honest
7 life.

8 I'm not happy that I have guided myself into
9 trouble with the law but it has honestly changed me for the
10 better. I've realized that I am good person and I want to be
11 better. I'm not living in my past anymore. I only want to
12 focus on my future.

13 I have lots of positive and encouraging women in my
14 life now to help motivate and push me to be successful.

15 I have been learning to be obedient and respectful
16 to authority and to be honest with all others.

17 I have not been successful in getting a job yet,
18 but I passed my GED and I am proud because I had doubted
19 myself.

20 I believe that great things take time so I'm doing
21 the best I can each day to make a difference in my life.

22 I now know the type of people I should have in my
23 life and the ones I shouldn't. Maybe I always knew but I
24 didn't want better people in my life because I didn't want or
25 know how to be a better person. All I want in life now is to

1 be everything I never was. And to me that is a person who
 2 can be trustworthy, hardworking, disciplined, honest and
 3 caring. I want to serve others and be a voice to women who
 4 have and are living the abuse I went through. I'm going to
 5 turn all my mess into a message.

6 I plan on going back to school to get a career for
 7 myself. And that helps me to know that I can accomplish
 8 anything I set my mind on. All I have to do is work hard, be
 9 consistent and be dedicated. I know that I have a lot of
 10 potential, but I want to be more advanced in my life.

11 The time I have spent incarcerated really helped me
 12 to see how my actions harmed the victims involved in my
 13 case. If there was a way to apologize to them now I would
 14 let them know how badly I feel for the pain I may have caused
 15 them.

16 I also wish to extend my apologies to this Court
 17 for causing such a great deal of inconvenience by having to
 18 handle everything needed to process my case. I don't want to
 19 be seen as a bad person, I want only to prove that I can do
 20 great things with my life. I never knew how to be
 21 responsible with my life and the decisions I make, but I have
 22 been learning. I know that it was my responsibility as a
 23 human being to know right from wrong and to make sure that I
 24 continue to do right things.

25 I take full responsibility in the role I played in

1 all this. I just wish I would have respected the law long
 2 ago and will continue to respect the law in the future. I
 3 want nothing more than to obey all my higher authority. I
 4 never had people in my life that taught me how to be honest
 5 and obedient, but I do now. And I'm grateful for the
 6 consideration the Court has shown me this far and look
 7 forward to successfully completing my remaining obligations.

8 I want to finish my healing of my mind and spirit
 9 into blossoming into a beautiful woman. I have been becoming
 10 a person who can be trusted and believed in and that helps me
 11 to know that people can change and I have changed. It's such
 12 an amazing thing to me. I can't wait to continue my journey
 13 in life. I look forward to moving onto a better chapter in
 14 my life.

15 And also I want to thank you for taking a chance
 16 with me and letting me out to show that I can be productive
 17 and I know that I didn't succeed in getting a job which I
 18 wanted to, but I believe I had a sense of failure, that I
 19 wouldn't do it right and maybe I'll be too nervous and keep
 20 making mistakes so I've put myself down about it and so I
 21 kinda fell off for a moment, but I knew that I didn't want to
 22 be back in Court or in jail so I've moved on and did better
 23 for myself and got my GED because I knew that played a big
 24 part in getting a job is that's what they really require.
 25 And I'm just -- I believe that I've grown a lot throughout

1 this and I'm -- I'm not thankful that it happened, but I know
 2 that it pushed me to not be lazy and to want something
 3 without procrastinating about it and I want a better life for
 4 myself.

5 THE COURT: All right. Well, everybody does, Ms.
 6 Middleton, and I -- I do commend you for the insight that you
 7 show in your own situation now. You have grown considerably
 8 since I first encountered you in Court years ago. You
 9 obviously, and I'm not going to chronicle, the presentence
 10 report does that, you had a lot of difficult situations in
 11 your youth. You were the victim of a lot of abuse. You were
 12 pushed into a life of prostitution at a very young age. By
 13 the time you arrived here, such titles as bottom bitch were
 14 given to you. I mean this was -- you know, you were moving
 15 up in that hierarchy. Mr. Franklin controlled you. He
 16 really did. He's in prison for a long time. He belongs in
 17 prison for a long time.

18 And I think that the jury's verdict, when they
 19 hung, probably reflected some real misgivings about why you
 20 really were here. And obviously the government has a
 21 responsibility to prosecute cases, including those who were
 22 involved, as you were, in bringing also other young people,
 23 continue -- contributing to that cycle, for those two young
 24 women as well. And who knows, you know, what their life is
 25 going to be like -- that maybe they're not going to be as

1 fortunate as you are in getting stopped and forced into a
2 situation where, after you thought about it, your only
3 alternative was to turn your life around but you have.

4 And I know there have been some issues, and I know
5 it's difficult and if Franklin ever calls you don't -- don't
6 answer the phone. I mean it's just that simple. And don't
7 succumb to those temptations that may still linger in the
8 back of your mind and focus on doing what the good people
9 here have come to support you today are trying to help you
10 accomplish.

11 And you can, you will find work. You will turn
12 your life around and become a productive member of society
13 and that's why I think to require you to register as a sex
14 offender under any state law would be insidious, frankly. I
15 think it would be just wrong, unjust and I certainly would do
16 whatever I could do, as the sentencing Judge here, to see to
17 that that not happen because you don't fit today that mold
18 and you should not be strapped with that moniker for the rest
19 of your life, in my judgment.

20 So with -- with that I'm going to follow the
21 recommendation of the Department of Probation and order that
22 you be sentenced to credit for time served, the 19 months you
23 had already served in custody.

24 That will be followed by the recommended three year
25 term of supervised release under the standard terms and

1 conditions.

2 I'm not gonna impose a monetary penalty, a fine.

3 You must pay the mandatory penalty assessment of \$100.

4 But the -- in addition to the general conditions,
5 the following special conditions will apply.

6 First, you shall not possess or have under your
7 control or have access to any firearms, dangerous weapon or
8 explosive device.

9 Second, you will be subject to the warrantless
10 search of your residence, person, property and automobile
11 without a warrant by the Department of Probation under
12 reasonable circumstances and at reasonable times.

13 Third, you'll be required to complete and
14 participate in, successfully, substance abuse treatment
15 programming and/or cognitive based life skills programming,
16 including drug and alcohol testing at a maximum rate of 104
17 tests per year. To the extent you can afford to do so, you
18 must pay the costs of that treatment. I realize right now
19 that's not possible, but in the future it might be.

20 Fourth, you'll be subject to mental health
21 treatment programming. Again, under the direction of the
22 Department of Probation and that also will require that you
23 refrain from the use of -- and possession of beer, wine,
24 liquor or other forms of intoxicants and any illegal
25 controlled substances while in such treatment. And also that

1 you pay the cost of that if you can afford to do so.

2 Finally, and fifth, you shall reside at the Destiny
 3 House or with the Destiny House program for a period of 12
 4 months from this date as a condition of supervision. I think
 5 that's been a wonderful support mechanism for you in terms of
 6 making sure you are stable and will continue to be stable in
 7 the future.

8 And the one thing I hope you will do, in addition
 9 to straightening out your own life, which is help other
 10 people do the same thing. The people that are here from
 11 Destiny House are involved in that. I don't know the stories
 12 of any of them, but I am sure there are some that could tell
 13 some stories and they've seen people who've made the
 14 difference in the lives of other women or men who, at a young
 15 age, find themselves in the position you found yourself in.
 16 And, frankly, nobody can speak to those young people better
 17 than somebody who's been down that road. Some guy in a
 18 black robe talking about it in a courtroom isn't gonna do any
 19 good. Attorneys aren't -- they're gonna be helpful, but
 20 they're not going to be able to do it. You really know what
 21 you're talking about and you could be a real asset, a real
 22 advocate and do some good. And I hope you'll resolve
 23 yourself to do that as well as just living out your life as
 24 well as you can.

25 But that will be the order.

1 Mr. Franzen, did you have anything further?

2 MR. FRANZEN: Just for clarification, Your Honor,
3 on the record is the departure to a Level 12, pursuant to
4 5K2.0 and 5K2.12?

5 THE COURT: Yes, pursuant to both and to Level 12
6 to explain the sentencing range.

7 MR. FRANZEN: And then I also have a copy of the
8 conditions for the defendant and if she could report to the
9 probation officer follow -- probation office following these
10 proceedings.

11 THE COURT: That would be great. They're right
12 across the street and you'll get set up with your probation
13 officer.

14 THE DEFENDANT: Thank you.

15 THE COURT: And is there anything else on behalf of
16 the government or the defense?

17 MR. YANG: I just wanted to introduce the Court to
18 Allison Kerr, she's a Special AUSA who will prosecuting these
19 types of cases for our office.

20 THE COURT: All right. And it's Ms. Kerr?

21 MS. KERR: Yes, Your Honor.

22 THE COURT: Pleasure. Good to have you -- good to
23 have you with us, Ms. Kerr. Thank you.

24 MS. KERR: Thank you.

25 THE COURT: And anything further, Ms. Hill?

1 MS. HILL: Nothing further, Your Honor. Thank you
2 very much.

3 THE COURT: All right. Well, thank you.

4 PROCEEDINGS CONCLUDED AT 10:27:30 A.M.

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CERTIFICATION

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